BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

LARRY DEAN MOUNT Claimant VS. **UNIFIED SCHOOL DISTRICT 260** Respondent AND **KANSAS ASSOC. OF SCHOOL BOARDS** **WORKERS COMPENSATION FUND** Insurance Carrier	)	Docket No. 1,017,548

ORDER

Respondent requests review of the July 20, 2004 preliminary hearing Order entered by Administrative Law Judge (ALJ) John D. Clark.

ISSUES

The ALJ found that claimant was injured in an accident on April 23, 2004, which arose out of and in the course of his employment with respondent.[1] After considering the opinions expressed by Dr. Chris Miller, the ALJ ordered all medical expenses to be paid and authorized Dr. Miller to serve as the treating physician, as he related claimant's right knee problems to claimant's job activities. In addition, the ALJ ordered temporary total disability payments be made commencing May 5, 2004 and continuing until released.

Respondent argues that the ALJ erred in finding claimant proved that he was injured as a result of "a personal injury by accident that arose out of and in the course of his employment" with respondent.[2] Distilled to its essence, respondent contends that other than the fact that claimant was at work when his symptoms began, there is no "nexus" between claimant's meniscal tear and his work.

Claimant argues that he suffered injury out of and in the course of employment. He argues that his job required him to work on his knees, and that although he could not say

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[1] The ALJ also concluded claimant provided timely notice as required by K.S.A. 44-520. Respondent and its carrier (respondent) have not appealed this aspect of the Order.

[2] Notice of Appeal at 1.

for sure when or what triggered the pain, he was certain that it first occurred while performing his custodial duties several hours into his work day on April 23, 2004. Accordingly, claimant requests the Board affirm the ALJ's preliminary hearing Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant had been employed with respondent as a custodian for two years. In April 2004, claimant was assigned to work at Cooper Elementary, where he worked alone. His supervisor was Ken Price. Claimant's normal working hours were 3:30 p.m. to 11:00 p.m. Claimant's duties included vacuuming and trash pick up. He was required to work on his knees when he needed to plug items into outlets, and when the carpets need to be cleaned.

On the afternoon of April 23, 2004, claimant reported to work and began his normal duties, including vacuuming. This task required claimant to get down on his knees and plug in the vacuum sweeper. There had been some sort of fund-raiser at the school that day so there was "more trash and more extra work to do."[3] Approximately 9:30 - 10:00 p.m. claimant recalls feeling pain in his right knee all of a sudden, but he denies a misstep, a twist or a slip. In fact, when he reported the event to his employer he told Diana, the woman who handles the workers compensation claims ". . .that I don't recall doing anything to it. . . "[4] Diana told claimant that his claim for workers compensation benefits would be denied if he could not show that his injury occurred while working.[5]

As a result, claimant sought medical treatment on his own with his primary care physician, Dr. Heba Ferguson on April 26, 2004. Dr. Ferguson ordered an MRI, and referred claimant to Dr. Chris Miller. Dr. Miller noted in his report that it was not uncommon for someone in claimant's age group to develop a symptomatic meniscus tear without a specific traumatic episode or injury, and that just because there was no specific trauma does not mean that claimant was not injured at work.

The ALJ concluded the claimant had sustained his burden of proof on the underlying issue of compensability. Specifically, he found that claimant was injured in an accident that arose "out of and in the course of his employment with [r]espondent".[6]

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[3] P.H. Trans. at 9.

[4] *Id.*

[5] *Id.*

[6] ALJ Order (July 20, 2004) at 1.

In order for a claimant to collect workers compensation benefits the worker must suffer an accidental injury out of and in the course of employment. The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when it is apparent to the rational mind, upon consideration of all circumstances, that there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment.[7]

The Board finds that the ALJ's conclusions are reasonable given these facts. Claimant's job is such that it requires him to regularly get down on his knees to plug in the vacuum or other electrical equipment necessary to perform his job. Contrary to Diana's belief, the fact that claimant cannot recall any distinctive trip or slip does not preclude compensability. Just like the ALJ, the Board is persuaded by Dr. Miller's opinions. "The absence of a specific trauma does not mean that this problem did not start at work."[8] Accordingly, the Board affirms the ALJ's findings with respect to an accidental injury arising out of and in the course of claimant's employment with respondent.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated July 20, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of August 2004.

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BOARD MEMBER

c: Phillip R. Fields, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[7] *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

[8] P.H. Trans., Cl. Ex. 1 at 1.